

1
2
3
4
5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 ROBERT A.,

8 Plaintiff,

9 v.

10 ANDREW M. SAUL, Commissioner
11 of Social Security,

12 Defendant.

NO. 2:19-CV-0274-TOR

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

13 BEFORE THE COURT are the parties' cross-motions for summary
14 judgment (ECF Nos. 12, 17). The Court has reviewed the administrative record
15 and the parties' completed briefing, and is fully informed. For the reasons
16 discussed below, the Court **DENIES** Plaintiff's Motion and **GRANTS**
17 Defendant's Motion.

18 **JURISDICTION**

19 The Court has jurisdiction pursuant to 42 U.S.C. §§ 405(g), 1383(c)(3).
20

STANDARD OF REVIEW

A district court's review of a final decision of the Commissioner of Social Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited: the Commissioner's decision will be disturbed "only if it is not supported by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158-59 (9th Cir. 2012) (citing 42 U.S.C. § 405(g)). "Substantial evidence" means relevant evidence that "a reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159 (quotation and citation omitted). Stated differently, substantial evidence equates to "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and citation omitted). In determining whether this standard has been satisfied, a reviewing court must consider the entire record as a whole rather than searching for supporting evidence in isolation. *Id.*

In reviewing a denial of benefits, a district court may not substitute its judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001). If the evidence in the record "is susceptible to more than one rational interpretation, [the court] must uphold the ALJ's findings if they are supported by inferences reasonably drawn from the record." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court "may not reverse an ALJ's decision on account of an error that is harmless." *Id.* An error is harmless "where it is inconsequential to the [ALJ's] ultimate nondisability determination."

1 *Id.* at 1115 (quotation and citation omitted). The party appealing the ALJ’s
2 decision generally bears the burden of establishing that it was harmed. *Shinseki v.*
3 *Sanders*, 556 U.S. 396, 409-10 (2009).

4 **FIVE STEP SEQUENTIAL EVALUATION PROCESS**

5 A claimant must satisfy two conditions to be considered “disabled” within
6 the meaning of the Social Security Act. First, the claimant must be unable “to
7 engage in any substantial gainful activity by reason of any medically determinable
8 physical or mental impairment which can be expected to result in death or which
9 has lasted or can be expected to last for a continuous period of not less than 12
10 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). Second, the claimant’s
11 impairment must be “of such severity that [he or she] is not only unable to do [his
12 or her] previous work[,] but cannot, considering [his or her] age, education, and
13 work experience, engage in any other kind of substantial gainful work which exists
14 in the national economy.” 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

15 The Commissioner has established a five-step sequential analysis to
16 determine whether a claimant satisfies the above criteria. *See* 20 §
17 404.1520(a)(4)(i)-(v). At step one, the Commissioner considers the claimant’s
18 work activity. 20 C.F.R. § 404.1520(a)(4)(i). If the claimant is engaged in
19 “substantial gainful activity,” the Commissioner must find that the claimant is not
20 disabled. 20 C.F.R. § 404.1520(b).

1 If the claimant is not engaged in substantial gainful activities, the analysis
2 proceeds to step two. At this step, the Commissioner considers the severity of the
3 claimant's impairment. 20 C.F.R. § 404.1520(a)(4)(ii). If the claimant suffers
4 from "any impairment or combination of impairments which significantly limits
5 [his or her] physical or mental ability to do basic work activities," the analysis
6 proceeds to step three. 20 C.F.R. § 404.1520(c). If the claimant's impairment
7 does not satisfy this severity threshold, however, the Commissioner must find that
8 the claimant is not disabled. *Id.*

9 At step three, the Commissioner compares the claimant's impairment to
10 several impairments recognized by the Commissioner to be so severe as to
11 preclude a person from engaging in substantial gainful activity. 20 C.F.R. §
12 404.1520(a)(4)(iii). If the impairment is as severe or more severe than one of the
13 enumerated impairments, the Commissioner must find the claimant disabled and
14 award benefits. 20 C.F.R. § 404.1520(d).

15 If the severity of the claimant's impairment does meet or exceed the severity
16 of the enumerated impairments, the Commissioner must pause to assess the
17 claimant's "residual functional capacity." Residual functional capacity ("RFC"),
18 defined generally as the claimant's ability to perform physical and mental work
19 activities on a sustained basis despite his or her limitations (20 C.F.R. §
20 404.1545(a)(1)), is relevant to both the fourth and fifth steps of the analysis.

1 At step four, the Commissioner considers whether, in view of the claimant's
2 RFC, the claimant is capable of performing work that he or she has performed in
3 the past ("past relevant work"). 20 C.F.R. § 404.1520(a)(4)(iv). If the claimant is
4 capable of performing past relevant work, the Commissioner must find that the
5 claimant is not disabled. 20 C.F.R. § 404.1520(f). If the claimant is incapable of
6 performing such work, the analysis proceeds to step five.

7 At step five, the Commissioner considers whether, in view of the claimant's
8 RFC, the claimant is capable of performing other work in the national economy.
9 20 C.F.R. § 404.1520(a)(4)(v). In making this determination, the Commissioner
10 must also consider vocational factors such as the claimant's age, education and
11 work experience. *Id.* If the claimant is capable of adjusting to other work, the
12 Commissioner must find that the claimant is not disabled. 20 C.F.R. §
13 404.1520(g)(1). If the claimant is not capable of adjusting to other work, the
14 analysis concludes with a finding that the claimant is disabled and is therefore
15 entitled to benefits. *Id.*

16 The claimant bears the burden of proof at steps one through four above.
17 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to
18 step five, the burden shifts to the Commissioner to establish that (1) the claimant is
19 capable of performing other work; and (2) such work "exists in significant
20

1 numbers in the national economy.” 20 C.F.R. § 404.1560(c)(2); *Beltran v. Astrue*,
2 700 F.3d 386, 389 (9th Cir. 2012).

3 **ALJ’S FINDINGS**

4 On October 13, 2016, Plaintiff filed an application for Title II disability
5 insurance benefits, alleging an onset date of August 20, 2013. Tr. 220-21. The
6 application was denied initially, Tr. 127-29, and on reconsideration, Tr. 133-35.
7 Plaintiff appeared at a hearing before an administrative law judge (“ALJ”) on May
8 3, 2018. Tr. 53-86. On June 27, 2018, the ALJ denied Plaintiff’s claim. Tr. 16-
9 35.

10 As a threshold matter, the ALJ found Plaintiff met the insured status
11 requirements of the Social Security Act through December 31, 2017. Tr. 21. At
12 step one of the sequential evaluation analysis, the ALJ found Plaintiff had not
13 engaged in substantial gainful activity from August 20, 2013, the alleged onset
14 date, through December 31, 2017, the date last insured. *Id.* At step two, the ALJ
15 found Plaintiff had the following severe impairments: Type I diabetes mellitus,
16 obesity, generalized anxiety disorder, and depressive disorder. *Id.* At step three,
17 the ALJ found Plaintiff did not have an impairment or combination of impairments
18 that meets or medically equals the severity of a listed impairment. Tr. 22. The
19 ALJ then found Plaintiff had the RFC to perform light work with the following
20 limitations:

1 [Plaintiff] should never climb ladders, ropes, or scaffolds. He should avoid
2 concentrated exposure to extreme temperatures and all exposure to hazards.
3 He should be able to maintain attention and concentration for 2 hour
4 intervals between regularly scheduled breaks. He can work in a predictable
5 work environment with seldom change. He should not have any contact
6 with the public.

7 Tr. 23-24.

8 At step four, the ALJ found Plaintiff was not capable of performing any past
9 relevant work. Tr. 27. At step five, the ALJ found that, considering Plaintiff's
10 age, education, work experience, RFC, and testimony from a vocational expert,
11 there were other jobs that existed in significant numbers in the national economy
12 that Plaintiff could perform through the date last insured, such as cleaner
13 housekeeping and cafeteria attendant. Tr. 27-28. The ALJ concluded Plaintiff was
14 not under a disability, as defined in the Social Security Act, from August 20, 2013,
15 the alleged onset date, through December 31, 2017, the date last insured. Tr. 28.

16 On June 20, 2019, the Appeals Council denied review, Tr. 1-7, making the
17 ALJ's decision the Commissioner's final decision for purposes of judicial review.
18 *See* 20 C.F.R. §§ 404.981, 422.210.

19 ISSUES

20 Plaintiff seeks judicial review of the Commissioner's final decision denying
him disability insurance benefits under Title II of the Social Security Act. Plaintiff
raises the following issues for this Court's review:

- 1 1. Whether the ALJ properly weighed Plaintiff's symptom testimony;
- 2 2. Whether the ALJ properly weighed the medical opinion evidence; and
- 3 3. Whether the ALJ's RFC formulation is supported by substantial
- 4 evidence.

5 ECF No. 12 at 1.

6 **DISCUSSION**

7 **A. Plaintiff's Symptom Testimony**

8 Plaintiff contends the ALJ failed to rely on clear and convincing reasons to
9 discredit his symptom testimony. ECF No. 12 at 3-8.

10 An ALJ engages in a two-step analysis to determine whether to discount a
11 claimant's testimony regarding subjective symptoms. SSR 16-3p, 2016 WL
12 1119029, at *2. "First, the ALJ must determine whether there is 'objective
13 medical evidence of an underlying impairment which could reasonably be
14 expected to produce the pain or other symptoms alleged.'" *Molina*, 674 F.3d at
15 1112 (quoting *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009)). "The
16 claimant is not required to show that [the claimant's] impairment 'could reasonably
17 be expected to cause the severity of the symptom [the claimant] has alleged; [the
18 claimant] need only show that it could reasonably have caused some degree of the
19 symptom.'" *Vasquez*, 572 F.3d at 591 (quoting *Lingenfelter v. Astrue*, 504 F.3d
20 1028, 1035-36 (9th Cir. 2007)).

1 Second, “[i]f the claimant meets the first test and there is no evidence of
2 malingering, the ALJ can only reject the claimant’s testimony about the severity of
3 the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the
4 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (citations
5 omitted). General findings are insufficient; rather, the ALJ must identify what
6 symptom claims are being discounted and what evidence undermines these claims.
7 *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995)); *Thomas v.*
8 *Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (requiring the ALJ to sufficiently
9 explain why he or she discounted claimant’s symptom claims). “The clear and
10 convincing [evidence] standard is the most demanding required in Social Security
11 cases.” *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v.*
12 *Comm’r of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

13 Factors to be considered in evaluating the intensity, persistence, and limiting
14 effects of a claimant’s symptoms include: (1) daily activities; (2) the location,
15 duration, frequency, and intensity of pain or other symptoms; (3) factors that
16 precipitate and aggravate the symptoms; (4) the type, dosage, effectiveness, and
17 side effects of any medication an individual takes or has taken to alleviate pain or
18 other symptoms; (5) treatment, other than medication, an individual receives or has
19 received for relief of pain or other symptoms; (6) any measures other than
20 treatment an individual uses or has used to relieve pain or other symptoms; and (7)

1 any other factors concerning an individual's functional limitations and restrictions
2 due to pain or other symptoms. SSR 16-3p, 2016 WL 1119029, at *7-*8; 20
3 C.F.R. § 404.1529(c). The ALJ is instructed to "consider all of the evidence in an
4 individual's record," "to determine how symptoms limit ability to perform work-
5 related activities." SSR 16-3p, 2016 WL 1119029, at *2.

6 The ALJ found Plaintiff's impairments could reasonably be expected to
7 cause the alleged symptoms; however, Plaintiff's statements concerning the
8 intensity, persistence, and limiting effects of those symptoms were not entirely
9 consistent with the evidence. Tr. 24.

10 *1. Treatment Noncompliance*

11 The ALJ found Plaintiff's symptom reporting was undermined by evidence
12 that he was not compliant with treatment recommendations. Tr. 24-25. "A
13 claimant's subjective symptom testimony may be undermined by an unexplained,
14 or inadequately explained, failure to . . . follow a prescribed course of treatment."
15 *Trevizo v. Berryhill*, 871 F.3d 664, 679 (9th Cir. 2017) (citations omitted). Here,
16 the ALJ noted that despite Plaintiff's testimony that he was "constantly" checking
17 his blood sugar levels and adjusting his medications, the record indicated that
18 Plaintiff's diabetes was poorly controlled due to compliance issues. Tr. 24;
19 *compare* Tr. 72, 302 *with* Tr. 58 (Dr. Jahnke testified that review of the full record
20 showed Plaintiff's diabetes was poorly controlled due to compliance issues); Tr.

1 754 (Dr. Lyko noted Plaintiff's suboptimal control of his diabetes was "due to
2 infrequent glucose testing [and] lack of correction insulin" and recommended
3 Plaintiff test more frequently). The ALJ also noted that Dr. Jahnke testified that
4 her review of the record did not reveal significant notes regarding diabetic
5 education. Tr. 24-25; *see* Tr. 59. The ALJ reasonably concluded that Plaintiff's
6 symptom allegations were consistent with evidence of Plaintiff's poor treatment
7 compliance. Tr. 24-25. Moreover, Plaintiff did not challenge this finding. ECF
8 No. 12 at 3-8. This finding is supported by substantial evidence.

9 *2. Lack of Supporting Medical Evidence*

10 The ALJ found that Plaintiff's allegations of disabling mental health
11 impairments were not supported by the medical evidence. Tr. 25. An ALJ may
12 not discredit a claimant's symptom testimony and deny benefits solely because the
13 degree of the symptoms alleged is not supported by objective medical evidence.
14 *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001); *Bunnell v. Sullivan*, 947
15 F.2d 341, 346-47 (9th Cir. 1991); *Fair v. Bowen*, 885 F.2d 597, 601 (9th Cir.
16 1989); *Burch v. Barnhart*, 400 F.3d 676, 680 (9th Cir. 2005). However, the
17 objective medical evidence is a relevant factor, along with the medical source's
18 information about the claimant's pain or other symptoms, in determining the
19 severity of a claimant's symptoms and their disabling effects. *Rollins*, 261 F.3d at
20 857; 20 C.F.R. § 404.1529(c)(2). Mental status examinations are objective

1 measures of an individual's mental health. *Buck v. Berryhill*, 869 F.3d 1040, 1049
2 (9th Cir. 2017). Here, the ALJ noted that despite Plaintiff's allegations that
3 anxiety and depression limited his ability to work, the record contained evidence of
4 normal mental status examinations. Tr. 25; *compare* Tr. 302 with Tr. 65 (Dr.
5 Winfrey testified Plaintiff "aced" his December 14, 2016 consultative mental status
6 examination); Tr. 633 (April 28, 2016: mental status examination showed Plaintiff
7 was alert and cooperative, had normal mood and affect, and exhibited normal
8 attention span and concentration). The ALJ reasonably concluded that this mental
9 status examination evidence was inconsistent with Plaintiff's allegations.
10 Moreover, Plaintiff did not challenge this finding. ECF No. 12 at 3-8. This
11 finding is supported by substantial evidence.

12 3. *Daily Activities*

13 The ALJ found that Plaintiff's symptom allegations were inconsistent with
14 his daily activities. Tr. 25. The ALJ may consider a claimant's activities that
15 undermine reported symptoms. *Rollins*, 261 F.3d at 857. If a claimant can spend a
16 substantial part of the day engaged in pursuits involving the performance of
17 exertional or non-exertional functions, the ALJ may find these activities
18 inconsistent with the reported disabling symptoms. *Fair*, 885 F.2d at 603; *Molina*,
19 674 F.3d at 1113. "While a claimant need not vegetate in a dark room in order to
20 be eligible for benefits, the ALJ may discredit a claimant's testimony when the

1 claimant reports participation in everyday activities indicating capacities that are
2 transferable to a work setting” or when activities “contradict claims of a totally
3 debilitating impairment.” *Molina*, 674 F.3d at 1112-13.

4 Here, the ALJ noted Plaintiff reported his daily activities to include personal
5 care without limitations; household tasks such as vacuuming, taking out the
6 garbage, and mowing the lawn; driving; grocery shopping and preparing simple
7 meals; and taking a trip to Panama. Tr. 25; *see* Tr. 275-79, 303-07, 581. Although
8 the ALJ relied on these activities, the ALJ did not articulate how they were
9 transferable to a work setting or inconsistent with disability. Tr. 25. The Ninth
10 Circuit has cautioned against reliance on “certain daily activities, such as grocery
11 shopping, driving a car, or limited walking for exercise” to discount a plaintiff’s
12 symptom allegations. *Vertigan v. Halter*, 260 F.3d 1044, 1050 (9th Cir. 2001).
13 Even if the ALJ’s finding is error, such error is harmless because the ALJ provided
14 several other clear and convincing reasons, which Plaintiff did not challenge, to
15 discredit Plaintiff’s symptom allegations. *Molina*, 674 F.3d at 1115 (“[S]everal of
16 our cases have held that an ALJ’s error was harmless where the ALJ provided one
17 or more invalid reasons for disbelieving a claimant’s testimony, but also provided
18 valid reasons that were supported by the record.”). Because any error here is
19 harmless, Plaintiff is not entitled to relief on these grounds.

1 **B. Medical Opinion Evidence**

2 Plaintiff challenges the ALJ's evaluation of the medical opinion of
3 Plaintiff's treating physician, Adam Lyko, M.D. ECF No. 12 at 8-10.

4 There are three types of physicians: "(1) those who treat the claimant
5 (treating physicians); (2) those who examine but do not treat the claimant
6 (examining physicians); and (3) those who neither examine nor treat the claimant
7 [but who review the claimant's file] (nonexamining [or reviewing] physicians)." *Holohan v. Massanari*, 246 F.3d 1195, 1201-02 (9th Cir. 2001) (citations omitted).
8 Generally, the opinion of a treating physician carries more weight than the opinion
9 of an examining physician, and the opinion of an examining physician carries more
10 weight than the opinion of a reviewing physician. *Id.* In addition, the
11 Commissioner's regulations give more weight to opinions that are explained than
12 to opinions that are not, and to the opinions of specialists on matters relating to
13 their area of expertise over the opinions of non-specialists. *Id.* (citations omitted).
14

15 If a treating or examining physician's opinion is uncontradicted, an ALJ may
16 reject it only by offering "clear and convincing reasons that are supported by
17 substantial evidence." *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).
18 "However, the ALJ need not accept the opinion of any physician, including a
19 treating physician, if that opinion is brief, conclusory, and inadequately supported
20 by clinical findings." *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228

1 (9th Cir. 2009) (internal quotation marks and brackets omitted). “If a treating or
2 examining doctor’s opinion is contradicted by another doctor’s opinion, an ALJ
3 may only reject it by providing specific and legitimate reasons that are supported
4 by substantial evidence.” *Id.* (citing *Lester*, 81 F.3d at 830-831). The opinion of a
5 nonexamining physician may serve as substantial evidence if it is supported by
6 other independent evidence in the record. *Andrews v. Shalala*, 53 F.3d 1035, 1041
7 (9th Cir. 1995).

8 Dr. Lyko began treating Plaintiff in 2012 and opined on November 13, 2017,
9 that Plaintiff could walk two city blocks without rest or severe pain; that Plaintiff
10 could sit or stand for no more than 30 minutes at one time; that Plaintiff could sit
11 or stand/walk for no more than two hours total in an eight-hour workday; that
12 Plaintiff would need 5-10 minute breaks hourly; that Plaintiff could lift and carry
13 10-20 pounds occasionally and less than 10 pounds frequently; that Plaintiff could
14 frequently twist, stoop, crouch/squat, and climb stairs; that Plaintiff could
15 occasionally climb ladders; that Plaintiff had bilateral 50% limitation in hand
16 manipulation, 30% limitation in finger manipulation, and 20% limitation in
17 reaching; that Plaintiff should avoid exposure to most environmental irritants; that
18 Plaintiff would be “off task” 25% or more of a workday; that Plaintiff was
19 incapable of tolerating even “low stress” work; that Plaintiff’s impairments were
20 likely to cause “good days” and “bad days”; that Plaintiff’s impairments would

1 cause him to miss more than four days of work per month; and that Plaintiff's
2 fluctuating blood sugars can impair his ability to function normally. Tr. 757-60.
3 The ALJ gave Dr. Lyko's opinion little weight. Tr. 27. Because Dr. Lyko's
4 opinion was contradicted by Dr. Winfrey, Tr. 63-69, Dr. Jahnke, Tr. 57-62, Dr.
5 Staley, Tr. 116-17, Dr. Bernardez-Fu, Tr. 101-03, Dr. Harrison, Tr. 103-05, and
6 Dr. Robinson, Tr. 117-19, the ALJ was required to provide specific and legitimate
7 reasons for rejecting Dr. Lyko's opinion. *Bayliss*, 427 F.3d at 1216.

8 First, the ALJ found Dr. Lyko's opinion was entitled to less weight because
9 it was insufficiently explained and insufficiently supported. Tr. 27. Relevant
10 factors to evaluating any medical opinion include the amount of relevant evidence
11 that supports the opinion, the quality of the explanation provided in the opinion,
12 and the consistency of the medical opinion with the record as a whole.

13 *Lingenfelter*, 504 F.3d at 1042; *Orn v. Astrue*, 495 F.3d 625, 631 (9th Cir. 2007).

14 Here, the ALJ found that Dr. Lyko opined certain manipulative limitations for
15 which Dr. Lyko did not identify supporting evidence and that the record as a whole
16 failed to support. Tr. 27. Plaintiff challenges the ALJ's conclusion by identifying
17 a single treatment note that documents "abscess of upper arm and forearm," which
18 was noted to improve with antibiotic treatment. ECF No. 12 at 9; *see* Tr. 482.

19 This single treatment note does not undermine the substantial evidence supporting
20 the ALJ's conclusion that the longitudinal record did not support Dr. Lyko's

1 opined manipulative limitations. Tr. 27; *see, e.g.*, Tr. 488 (August 27, 2013: no
2 abnormal musculoskeletal or extremities findings upon physical examination); Tr.
3 443 (January 14, 2014: same); Tr. 431 (March 18, 2014: same) Tr. 419 (June 24,
4 2014: same); Tr. 625 (November 17, 2014: same); Tr. 650 (October 23, 2015:
5 same) Tr. 633 (April 28, 2016: same); Tr. 597 (September 13, 2016: same); Tr. 708
6 (March 28, 2017: same). This finding is supported by substantial evidence.

7 Additionally, the ALJ gave significant weight to the hearing testimony of
8 Dr. Jahnke, who testified that Dr. Lyko’s opined limitations were not supported by
9 the evidence. Tr. 25; *see* Tr. 60-62. The opinion of a nonexamining physician
10 may serve as substantial evidence if it is supported by other evidence in the record
11 and is consistent with it. *Andrews*, 53 F.3d at 1041. Dr. Jahnke specifically
12 testified that, contrary to Dr. Lyko’s assessment, Plaintiff’s condition could not be
13 accurately characterized as “brittle” diabetes and that Plaintiff’s diabetes was
14 poorly controlled due to his own treatment noncompliance. Tr. 58-59. As the ALJ
15 noted, other evidence in the record supported a finding that Plaintiff was not fully
16 compliant with his treatment regime. Tr. 24; *see* Tr. 754 (Dr. Lyko noted
17 Plaintiff’s suboptimal control of his diabetes was “due to infrequent glucose testing
18 [and] lack of correction insulin” and recommended Plaintiff test more frequently);
19 *see also* Tr. 598 (Plaintiff’s glucose log “shows less frequent testing than desired”);
20 Tr. 626 (Dr. Lyko recommended Plaintiff “test much more frequently”); Tr. 673

1 (Dr. Cosma found Plaintiff “still needs improvement on carb counting” and
2 checking blood glucose more often); Tr. 679 (Dr. Cosma suspected Plaintiff was
3 undercounting carbohydrates). The ALJ reasonably relied on Dr. Jahnke’s opinion
4 and the longitudinal evidence over the opinion of Dr. Lyko. The ALJ’s finding is
5 supported by substantial evidence.

6 Second, the ALJ found Dr. Lyko’s opinion on mental limitations was
7 entitled to less weight than the opinions of the psychologists in the record because
8 Dr. Lyko did not have psychological expertise. A medical provider’s
9 specialization is a relevant consideration in weighing medical opinion evidence.
10 20 C.F.R. § 404.1527(c)(5). Here, the ALJ noted that Dr. Lyko opined certain
11 mental limitations despite not having mental health expertise. Tr. 27. Plaintiff
12 challenges the ALJ’s conclusion by arguing that Dr. Lyko had expertise because he
13 was treating Plaintiff for anxiety. ECF No. 12 at 9. However, the treatment notes
14 that Plaintiff identifies to support this argument are those of Dr. Eckert, not Dr.
15 Lyko. Tr. 400, 438, 454, 457, 496, 499, 620, 624, 634, 648, 688, 706, 708, 711,
16 715. Plaintiff also argues that the ALJ misinterpreted Dr. Lyko’s opinion and that
17 the opined mental functional limitations were based on Plaintiff’s physical
18 condition rather than a mental health condition. ECF No. 12 at 9-10. Even if
19 Plaintiff is correct, such error would be harmless because the ALJ identified other
20 specific and legitimate reasons, supported by substantial evidence, to discredit Dr.

1 Lyko's opined limitations. *Molina*, 674 F.3d at 1115 (an error is harmless "where
2 it is inconsequential to the [ALJ's] ultimate nondisability determination.").

3 Plaintiff is not entitled to relief on these grounds.

4 **C. RFC Formulation**

5 Plaintiff contends generally that the ALJ's RFC formulation is not supported
6 by substantial evidence. ECF No. 12 at 10-12. However, Plaintiff's argument is
7 based entirely on the assumption that the ALJ erred in considering the medical
8 opinion evidence and Plaintiff's symptom allegations. *Id.* For reasons discussed
9 throughout this decision, the ALJ's consideration of Plaintiff's symptom claims
10 and consideration of the medical opinion evidence are legally sufficient and
11 supported by substantial evidence, and any errors identified were harmless. The
12 ALJ therefore did not err in assessing the RFC.

13 **CONCLUSION**

14 Having reviewed the record and the ALJ's findings, this Court concludes
15 that the ALJ's decision is supported by substantial evidence and free of harmful
16 legal error.

17 **ACCORDINGLY, IT IS HEREBY ORDERED:**

18 1. Plaintiff's Motion for Summary Judgment (ECF No. 12) is DENIED.

19 2. Defendant's Motion for Summary Judgment (ECF No. 17) is

20 GRANTED.

1 The District Court Executive is directed to enter this Order, enter judgment
2 accordingly, furnish copies to counsel, and **close the file**.

3 **DATED** March 24, 2020.



Thomas O. Rice
THOMAS O. RICE
Chief United States District Judge